IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 142 OF 2003

Prabhakar Parshuram Parab..... Appellant

versus

Bhagwan Shankar Parab
since deceased per L.Rs. .....respondent.

Shri P.K.Dhakephalkar for the appellant
Shri S.S.Pakale for respondents.

CORAM; V.R. KINGAONKAR, J.
DATED; 11TH JANUARY 2007

P.C.:

1. Heard the learned counsel for the parties.

2. The learned counsel for the appellant Shri Dhakephalkar submits that a substantial question of law is involved in this appeal. He points out that suit was for partition in respect of joint family property. Still, however, some of the properties incorporated in schedule III were not included. He submits that suit for partial partition cannot be filed. He also submits that suit ought to have been dismissed when a part of the joint Hindu family was not included.

3. The plaintiff filed suit for partition in respect of certain properties shown under schedule II. The plaintiff mentioned that the remaining properties in

schedule III need not be considered for partition, alleging that they are not subject matter of the suit for the reason that the lands are very small such as 0.3 ores or 0.5 ores and that there are other co-sharers who may be required to be impleaded, though they are not from the branch of plaintiffs. The plaintiff restricted his claim, therefore, in respect of the property shown in schedule II.

4. The clinching question is whether such suit for partition would fail if only partial partition is sought. It is pertinent to note that under Article 328 of the Hindu Law, partial partition is quite permissible. There is nothing to show that the co-parceners are ready to the partition of all the properties. Suit for partial partition may not be maintainable in such circumstances. For example, if the plaintiff is in possession of certain part of the joint Hindu property and excludes that part conveniently and seeks partition in respect of remaining part, then, it may not be possible to entertain such suit. However, when the plaintiff explains as to why the part of the property is not being included in the suit, then justification given by him may be considered by the court. Herein, the plaintiffs categorically stated that remaining properties were of either meagre nature and there were other cosharers of different branch to whom he did not

wish to join. In otherwords, he did not wish to unnecessarily widen the scope of partition suit. It need not be emphasised that partition of small fragments of 2 ares or 3 ares land is prohibited under the provisions of the Bombay Prevention of Fragmentation & Consolidation of Holdings Act. Consequently justification given by the plaintiff appears to be quite reasonable and acceptable.

5. Mr. Dhakephalkar the learned counsel for the appellant relied on certain observations in **"Kenchegowda (since deceased) by legal representatives Vs. Siddegowda @ Motegowda" reported in (1994)4 SCC 294.** The Apex Court has not, in my humble opinion, laid down legal principle to the effect that in all cases suit for partial partition would not be maintainable at all. There appears some confusion in view of the head note in this behalf. What the Apex court has observed is in the facts and circumstances of that case, the non-inclusion of other family property and impleadment of other co-sharers, which was not warranted in law. There are cases and cases, and under the peculiar circumstances, suit for partial partition may not be maintainable. When the bonafides of the plaintiffs are conspicuous, the decree for partial partition cannot be faulted with. The learned counsel for the appellant relied on certain observations in **"Satchidananda Samanta Vs. Ranjan**

Kumar Basu and other" reported in AIR 1992 Cal.222 it is held by Calcutta High court that all joint properties should be brought in hotchpot. I find it difficult to go along the observations made in the said judgment, particularly, when the facts of the present case are on different footing. In my opinion the question raised by the appellant is not substantial in nature in the eye of law. The concurrent findings of both the courts need not be disturbed. Hence the appeal deserves to be dismissed. It is accordingly dismissed. No order as to costs.

Civil Application, if any, is also dismissed.

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